

position, such as a purchase, loan, or repurchase agreement.

Unconditionally cancelable. The term *unconditionally cancelable* means, with respect to a commitment-type lending arrangement, that the Federal savings association may, at any time, with or without cause, refuse to advance funds or extend credit under the facility. In the case of home equity lines of credit, the savings association is deemed able to unconditionally cancel the commitment if it can, at its option, prohibit additional extensions of credit, reduce the line, and terminate the commitment to the full extent permitted by relevant Federal law.

United States Government or its agencies. The term *United States Government or its agencies* means an instrumentality of the U.S. Government whose debt obligations are fully and explicitly guaranteed as to the timely payment of principal and interest by the full faith and credit of the United States Government.

United States Government-sponsored agency or corporation. The term *United States Government-sponsored agency or corporation* means an agency or corporation originally established or chartered to serve public purposes specified by the United States Congress but whose obligations are not explicitly guaranteed by the full faith and credit of the United States Government.

§ 167.2 Minimum regulatory capital requirement.

(a) To meet its regulatory capital requirement a Federal savings association must satisfy each of the following capital standards:

(1) *Risk-based capital requirement.* (i) A Federal savings association's minimum risk-based capital requirement shall be an amount equal to 8% of its risk-weighted assets as measured under § 167.6 of this part.

(ii) A Federal savings association may not use supplementary capital to satisfy this requirement in an amount greater than 100% of its core capital as defined in § 167.5 of this part.

(2) *Leverage ratio requirement.* (i) A Federal savings association's minimum leverage ratio requirement shall be the amount set forth in § 167.8 of this part.

(ii) A Federal savings association must satisfy this requirement with core capital as defined in § 167.5(a) of this part.

(3) *Tangible capital requirement.* (i) A Federal savings association's minimum tangible capital requirement shall be the amount set forth in § 167.9 of this part.

(ii) A Federal savings association must satisfy this requirement with tangible capital as defined in § 167.9 of this part in an amount not less than 1.5% of its adjusted total assets.

(b) [Reserved]

(c) Federal savings associations are expected to maintain compliance with all of these standards at all times.

§ 167.3 Individual minimum capital requirements.

(a) *Purpose and scope.* The rules and procedures specified in this section apply to the establishment of an individual minimum capital requirement for a Federal savings association that varies from the risk-based capital requirement, the leverage ratio requirement or the tangible capital requirement that would otherwise apply to the savings association under this part.

(b) *Appropriate considerations for establishing individual minimum capital requirements.* Minimum capital levels higher than the risk-based capital requirement, the leverage ratio requirement or the tangible capital requirement required under this part may be appropriate for individual savings associations. Increased individual minimum capital requirements may be established upon a determination that the savings association's capital is or may become inadequate in view of its circumstances. For example, higher capital levels may be appropriate for:

(1) A Federal savings association receiving special supervisory attention;

(2) A Federal savings association that has or is expected to have losses resulting in capital inadequacy;

(3) A Federal savings association that has a high degree of exposure to interest rate risk, prepayment risk, credit risk, concentration of credit risk, certain risks arising from nontraditional activities, or similar risks; or a high proportion of off-balance sheet risk, especially standby letters of credit;

(4) A Federal savings association that has poor liquidity or cash flow;

(5) A Federal savings association growing, either internally or through acquisitions, at such a rate that supervisory problems are presented that are not dealt with adequately by other OCC regulations or other guidance;

(6) A Federal savings association that may be adversely affected by the activities or condition of its holding company, affiliate(s), subsidiaries, or other persons or savings associations with which it has significant business relationships, including concentrations of credit;

(7) A Federal savings association with a portfolio reflecting weak credit quality or a significant likelihood of financial loss, or that has loans in nonperforming status or on which borrowers fail to comply with repayment terms;

(8) A Federal savings association that has inadequate underwriting policies, standards, or procedures for its loans and investments; or

(9) A Federal savings association that has a record of operational losses that exceeds the average of other, similarly situated savings associations; has management deficiencies, including failure to adequately monitor and control financial and operating risks, particularly the risks presented by concentrations of credit and nontraditional activities; or has a poor record of supervisory compliance.

(c) *Standards for determination of appropriate individual minimum capital requirements.* The appropriate minimum capital level for an individual Federal savings association cannot be determined solely through the application of a rigid mathematical formula or wholly objective criteria. The decision is necessarily based, in part, on subjective judgment grounded in agency expertise. The factors to be considered in the determination will vary in each case and may include, for example:

(1) The conditions or circumstances leading to the determination that a higher minimum capital requirement is appropriate or necessary for the savings association;

(2) The exigency of those circumstances or potential problems;

(3) The overall condition, management strength, and future prospects of the savings association and, if applicable, its holding company, subsidiaries, and affiliates;

(4) The savings association's liquidity, capital and other indicators of financial stability, particularly as compared with those of similarly situated savings associations; and

(5) The policies and practices of the savings association's directors, officers, and senior management as well as the internal control and internal audit systems for implementation of such adopted policies and practices.

(d) *Procedures*—(1) *Notification.* When the OCC determines that a minimum capital requirement is necessary or appropriate for a particular Federal savings association, it shall notify the savings association in writing of its proposed individual minimum capital requirement; the schedule for compliance with the new requirement; and the specific causes for determining that the higher individual minimum capital requirement is necessary or appropriate for the savings association.

(2) *Response.* (i) The response shall include any information that the Federal savings association wants the OCC to consider in deciding whether to establish or to amend an individual minimum capital requirement for the savings association, what the individual capital requirement should be, and, if applicable, what compliance schedule is appropriate for achieving the required capital level. The response of the savings association must be in writing and must be delivered to the OCC within 30 days after the date on which the notification was received. The OCC may extend the time period for good cause. The time period for response by the insured savings association may be shortened for good cause:

(A) When, in the opinion of the OCC, the condition of the savings association so requires, and the OCC informs the savings association of the shortened response period in the notice;

(B) With the consent of the savings association; or

(C) When the savings association already has advised the OCC that it cannot or will not achieve its applicable minimum capital requirement.

(ii) Failure to respond within 30 days, or such other time period as may be specified by the OCC, may constitute a waiver of any objections to the proposed individual minimum capital requirement or to the schedule for complying with it, unless the OCC has provided an extension of the response period for good cause.

(3) *Decision.* After expiration of the response period, the OCC shall decide whether or not the OCC believes the proposed individual minimum capital requirement should be established for the Federal savings association, or whether that proposed requirement should be adopted in modified form, based on a review of the savings association's response and other relevant information. The OCC's decision shall address comments received within the response period from the savings association and shall state the level of capital required, the schedule for compliance with this requirement, and any specific remedial action the savings association could take to eliminate the need for continued applicability of the individual minimum capital requirement. The OCC shall provide the savings association with a written decision on the individual minimum capital requirement, addressing the substantive comments made by the savings association and setting forth the decision and the basis for that decision. Upon receipt of this decision by the savings association, the individual minimum capital requirement becomes effective and binding upon the savings association. This decision represents final agency action.

(4) *Failure to comply.* Failure to satisfy an individual minimum capital requirement, or to meet any required incremental additions to capital under a schedule for compliance with such an individual minimum capital requirement, shall constitute a legal basis for issuing a capital directive pursuant to § 167.4 of this part.

(5) *Change in circumstances.* If, after a decision is made under paragraph (d)(3) of this section, there is a change in the circumstances affecting the savings association's capital adequacy or its ability to reach its required minimum capital level by the specified date, the OCC may amend the individual minimum

capital requirement or the savings association's schedule for such compliance. The OCC may decline to consider a savings association's request for such changes that are not based on a significant change in circumstances or that are repetitive or frivolous. Pending the OCC's reexamination of the original decision, that original decision and any compliance schedule established thereunder shall continue in full force and effect.

§ 167.4 Capital directives.

(a) *Issuance of a Capital Directive—(1) Purpose.* (i) In addition to any other action authorized by law, the OCC may issue a capital directive to a Federal savings association that does not have an amount of capital satisfying its minimum capital requirement. Issuance of such a capital directive may be based on a Federal savings association's noncompliance with the risk-based capital requirement, the leverage ratio requirement, the tangible capital requirement, or individual minimum capital requirement established under this part, by a written agreement under 12 U.S.C. 1464(s), or as a condition for approval of an application. A capital directive may order a Federal savings association to:

(A) Achieve its minimum capital requirement by a specified date;

(B) Adhere to the compliance schedule for achieving its individual minimum capital requirement;

(C) Submit and adhere to a capital plan acceptable to the OCC describing the means and a time schedule by which the savings association shall reach its required capital level;

(D) Take other action, including but not limited to, reducing the savings association's assets or its rate of liability growth, or imposing restrictions on the savings association's payment of dividends, in order to cause the savings association to reach its required capital level;

(E) Take any action authorized under § 167.10(e); or

(F) Take a combination of any of these actions.

(ii) A capital directive issued under this section, including a plan submitted pursuant to a capital directive, is enforceable under 12 U.S.C. 1818 in